**[*Note.*—An asterisk (*) at the commencement of a speech indicates revision by the Member.]**

II.—MESSAGE FROM THE ASSEMBLY.

MR. PRESIDENT:—" I have to announce to the House that the following message, dated the 13th December 1938, has been received by me from the Hon. the Speaker of the Madras Legislative Assembly:— 11-45 a.m.

' In accordance with rule 94 of the Madras Assembly Rules, I transmit a copy of the Mappilla Marumakkattayam Bill (L.A. Bill No. 8 of 1937) as passed by the Assembly on the 7th December 1938, and signed by me, for the concurrence of the Council.' "

## NON-OFFICIAL BUSINESS.

### A.—BILL.

### III.—A BILL TO AMEND THE INDIAN SUCCESSION ACT, 1925 (L.C. BILL No. 2 OF 1938)

* MR. J. A. SALDANHA:—" Mr. President, I beg to move—

' *That the Bill*[a] *to amend the Indian Succession Act,* 1925 (*L.C. Bill No.* 2 *of* 1938), *be referred to a Select Committee* (*names of the Members of the Committee to be given later*).'

" This Bill seeks to place the Indian Christians on the same level as the Muslims and, to a large extent, the Hindus—all Hindus except those residing in the Presidency town, Madras City. I only plead for the removal of the injustice under which we, Indian Christians, have been labouring. What I say is that we should be placed on the same level as the other communities. The Statement of Objects and Reasons which is appended will explain briefly the grounds on which this appeal is made to the Council. For a better understanding of the Statement of Objects and Reasons, I shall read section 213 of the Indian Succession Act:

' No right as executor or legatee can be established in any court of justice, unless a court of competent jurisdiction in British India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed.

(2) This section shall not apply in the case of wills made by Muhammadans and shall only apply in the case of wills made by any Hindu, Buddhist, Sikh, or Jaina where such wills are of the classes specified in clauses (*a*) and (*b*) of section 57.'

The other relevant section which I shall read is section 370. It says:

' A succession certificate (hereinafter in this part referred to as a certificate) shall not be granted under this part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.'

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[a] Published in the *Fort St. George Gazette*, dated 23rd August 1938.

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" The position, Sir, is this: so far as intestate succession is concerned, we are placed on the same level as any other Indian community; but if there is a will, probate has got to be obtained, if the matter is to be fought out in the courts of law or if the money is due from insurance companies or from a bank. I shall illustrate this briefly. Now if an Indian Christian leaves an estate worth Rs. 10,000, a thousand rupees of which is to be recovered from somebody else, in that case, if one goes to court, one has to apply for probate and has to pay court-fee on the whole estate and not merely on the due of 1,000 rupees. But in the case of a Mussalman or a Hindu making a will outside the Presidency town of Madras, no probate need be applied for. One can apply for a succession certificate under section 370 and pay court-fee only on the amount outstanding—Rs. 1,000. So, while in the case of an Indian Christian, court-fee which comes to 3 per cent has to be paid on the whole amount of Rs. 10,000, in the case of a Hindu or Muhammadan, one pays only on one thousand rupees.

" This inequality of treatment must be set right at once; I am sure, seeing the anxiety shown to do justice to the minority communities including the Indian Christians, this appeal will not fall on deaf ears. I wish that my request may be considered with the sympathy of the whole House."

Mr. S. J. Gonsalves seconded the motion.

* SRI B. BHIMA RAO:—" Mr. President, I want to submit to the House as a matter of law that it is not competent for this Legislature to legislate on this subject. As is seen from paragraph 2 of the Statement of Objects and Reasons, the effect of this Bill, the real object of it, is to do away with the duties payable on probates to be obtained by Indian Christians. I submit that though under the concurrent list, the third list of the Seventh Schedule of the Government of India Act, we are competent to legislate under item 7 on 'wills, intestacy and succession, save as regards agricultural land,' the last item in the concurrent list says: 'fees in respect of any of the matters in this part of the list but not including fees taken in any court.' I submit, Sir, the real object of this Bill is not merely to get a declaration to see that probates taken out by Indian Christians are removed from the operation of a certain provision of the Indian Succession Act, but to see that they escape the duties leviable by the courts. These probate duties are taken by the courts when they grant probate and hence it comes under this exclusion in this last item of the concurrent list. Therefore I submit that this House is not competent to legislate on this measure. That is the objection that I take to the introduction of the measure."

* THE HON. SRI C. RAJAGOPALACHARIAR:—" If the objection, Sir, is that any Bill interferes with the existing law or seeks to modify Indian law, the only thing that has to be done is

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that after the Legislature has passed it, if it is a concurrent or a Provincial subject, it will be reserved for the assent of the Governor-General. It does not debar the Legislature from seizing hold of the subject-matter.''

* THE HON. SRI S. RAMANATHAN :—" I am grateful to the mover, Mr. Saldanha, for having pointed out this anomaly. It may be admitted at the outset that there are a lot of anomalies in regard to probates. And really section 57 of the Indian Succession Act makes a distinction not only between persons belonging to various religions but also makes territorial distinctions as to citizens of Madras, Bombay and Bengal. I may assure the House that the Government are aware of these anomalies and are taking steps to remove them. It is not an easy matter for us to bring about uniformity in this law, because if probate is to be taken for Hindus also, it affects the joint family property and so it requires a lot of careful consideration to work out the details in regard to other laws as well. I can only give the assurance that this matter is being looked into and the necessary alterations will be brought about in the law at the instance of the Government as early as possible. I think that with this assurance, the hon. Mover will withdraw the Bill."

* MR. J. A. SALDANHA :—" Mr. President, Sir, in view of the sympathetic speech of the Hon. Minister, and in view of the assurance given that as soon as possible—I hope it will be sooner than later—legislation will be brought up to place all communities without distinction of territory or religion on the same level, and in the hope that this assurance will be carried out soon, I beg leave of the House to withdraw the Bill. This matter has been before the Government for a long time. The Sir Charles Todhunter Committee had it before them—I myself was a witness before them. The difficulty was pointed out as to the joint families; but apart from joint families there are properties of Hindus and Muhammadans which can easily be brought under the operation of the Court-fees Act as well as of the Indian Succession Act. I hope that Government, at least as regards these persons and not as to joint families, will introduce legislation as soon as possible. I know there are difficulties because it is a taxation measure and nobody will relish it. I hope at the same time that my Muslim and Hindu friends will see the justice of what I say. Because the Hon. Premier wants as much money as possible, he may be impressed with what I say. (Laughter.) I hope the Congress party and all other communities and parties will join together in having one uniform rate for all communities with regard to death duties. If, for some reason that is not possible, I hope the Government will bring as early as possible a Bill to relieve the Indian Christians of the unequal and inequitable treatment. With these words, Sir, I beg leave of the House to withdraw my Bill." 12 noon.

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* THE HON. SRI C. RAJAGOPALACHARIAR:—"Sir, an impression may be created about the existence of an unequal and inequitable treatment, if we allow the last words of the previous speaker to be passed over without any comment. We have such varying personal laws that they should not be interpreted to mean and make out that the distinction is there with the intention of making a distinction between one community and another. As long as there are different personal laws, we have to provide rules for those different personal laws. For instance, even in the matter of the power to make wills, it took a long time for the Hindu community to get that right recognized. It was doubted whether there was any testamentary right at all. Then, take the case of the incidence of property. They are different in different classes. As was explained by the hon. Mover, the laws with regard to the testamentary alienation have differed whether it is survivorship or incidence of divided family. So if the testamentary system provided for the Hindus is different from that provided for the Indian Christians, which, by the way, is mostly based on that adopted by Europeans, it is not due to any attempt to make a discrimination between one community and another. This is not a ground for grievances being made out as discrimination of treatment. So I would urge on the Mover to unqualifiedly withdraw his motion without any sting in it."

* MR. J. A. SALDANHA:—"I would like to withdraw the words I used if such expression had caused any bitterness in the minds of my hon. Friends, and I beg leave of the House to withdraw my motion."

The motion was by leave withdrawn.

## B.—RESOLUTION.

### IV.—REDUCTION OF EXISTING LAND REVENUE ASSESSMENT.

* SRI RAO BAHADUR N. R. SAMIAPPA MUDALIYAR:—
"Mr. President, I beg to move—

'*that this Council recommends to the Government that the existing land revenue assessment be reduced by* $33\frac{1}{3}$ *per cent from fasli* 1348 *and also to cancel the G.O. No.* 1238, *Revenue, dated the* 14*th July* 1933.'

"This resolution is a hardy annual which for the past one decade and more has been coming up for discussion in the Legislature of this Province year after year with an almost monotonous regularity. The question, however, has not acquired that staleness which one is apt to associate with a regularly recurring event. The question has as much vitality and force in it as it had when the resolution was first moved about ten years ago. In fact the necessity for affording relief to the land-owning community has with the passage of years become more and more urgent. Also, these never-failing annual resolutions have demonstrated the soundness of the biblical advice, 'Ask and it shall be given; knock and